

1989

Van Dyke v. Chappell : Unknown

Utah Supreme Court

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Marcus Taylor; Labrum, Taylor & Blackwell; attorney for appellants.

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December 20, 1990

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Clerk, Supreme Court, Utah

Geoffrey J. Butler, Clerk
Utah State Supreme Court
332 State Capitol Building
Salt Lake City, Utah 84114

Re: Van Dyke vs. Chappell, Supreme Court No. 890133

Dear Mr. Butler:

Both Appellants and Respondents have submitted the above-captioned matter for consideration of the Court without oral argument.

In reviewing the file I note counsel for Appellants, in a citation of supplemental authorities invited the Court's attention to the case of Judd Family Limited Partnership vs. Hutchings, 141 Utah Adv. Rep. 6, filed August 20, 1990, Supreme Court Case No. 860100.

By filing the supplemental citation, it may be implied the Trial Court failed to consider a fifth element in the list of factors to be considered in the Utah doctrine of boundary by acquiescence as required in Halladay vs. Cluff, 685 P2d 500 (Utah 1984).

The Trial Court heard extensive evidence concerning the question of "objective uncertainty" and made extensive Findings of Fact thereon. The Findings of Fact are found in the Record 55-62; copies are attached to Appellants' Brief.

The findings of the Court are amply supported by evidence as documented in Respondents' Brief under Statement of Facts and discussed under each point of argument. Reference is made to the testimony of Surveyor Torgerson. He reviewed resurvey notes showing past surveyors had relied upon fence lines since corners of the section were not marked. (Tr.90-92 and 152-162; Exhibits 10 and 21). Survey monuments were established long after the fence was built.

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The purpose of this letter is to negate any implication that the subject of "objective uncertainty" was not considered by the Court in its Findings and to direct attention to the documentation of facts which support the findings.

Sincerely yours,

OLSEN, McIFF & CHAMBERLAIN

By



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TRO:gln

cc: Marcus Taylor

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Clerk, Supreme Court, Utah

October 29, 1990

Geoffrey J. Butler, Clerk
Utah Supreme Court
332 State Capitol Building
Salt Lake City, Utah 84114

RE: Van Dyke vs. Chappell, Supreme Court Case No. 890133

Dear Mr Butler

Both appellants and respondents have filed briefs with your office regarding the cited matter, and the case now awaits decision on appeal. However, I recently reviewed the decision of the Supreme Court in Judd Family Limited Partnership v. Hutchings, 141 Utah Adv. Rep. 6, filed August 20, 1990, Supreme Court Case No. 860100. That case has application to the instant matter. Therefore, pursuant to Rule 24(j), Utah Rules of Appellate Procedure, I am submitting this letter, together with nine copies, for consideration by the Court when study of the cited matter is undertaken.

Halladay v. Cluff, 685 P.2d 500 (Utah 1984), added a fifth element to the doctrine of boundary by acquiescence, that fifth element being "dispute or uncertainty measured against an objective test." Thereafter, in Staker v. Ainsworth, 785 P.2d 417 (Utah 1990), the Utah Supreme Court overruled Halladay by deleting the "fifth element" as a necessary requisite to establish boundary by acquiescence.

In Judd, supra, decided after Staker, supra, it was apparently questioned whether the fifth element was a required part of the cause of action. The Court in Judd, supra, observed that in as much as the case had been tried, and appeal filed therefrom, prior to the decision in Staker, supra, that the fifth element was indeed a requirement to be met by the party claiming boundary by acquiescence.

The instant matter presents a similar chronology. The following outlines the pertinent sequence of events:

1984 - Halladay decided.
June, 1988 - respondent (Van Dyke) filed suit in District Court.

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February 1989 - cited matter tried before District Court,
sitting without a jury.

April, 1989 - notice of appeal filed by appellants (Chappell).
January, 1990 - Staker decision issued.

The point of the foregoing is that respondent (Van Dyke) had the burden of showing the fifth element (dispute or uncertainty measured against an objective standard) at the trial of this cause. Appellants have argued that objective uncertainty was not demonstrated by the evidence offered by respondent (brief of appellants, page 31). Respondent has argued that a showing of objective uncertainty is not required by Utah law (brief of respondent, page 11). The decision in Judd, supra, resolves this point of contention.

Respectfully yours

LABRUM, TAYLOR & BLACKWELL


Marcus Taylor

MT:irj

cc: Tex R. Olsen
Mr. and Mrs. Marion Chappell